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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DAVID GORDON OPPENHEIMER,
an individual,

Plaintiff,

vs.

LOCKEHOUSE RETAIL GROUP,
INC., a California corporation and CIM
GROUP, LP, a California Limited
Partnership,

Defendants.

Case No. 4:22-cv-03444-JSW

**DEFENDANT CIM GROUP, LP's
ANSWER TO PLAINTIFFS'
COMPLAINT**

Judge: Hon. Jeffrey S. White
Courtroom 5, 2nd Floor

Trial Date: None Set

Defendant, CIM GROUP, L.P. ("CIM"), responds to Plaintiff DAVID GORDON OPPENHEIMER's ("Plaintiff") Complaint ("Complaint") as set forth below. Unless expressly admitted herein, CIM denies each allegation in the Complaint.

INTRADISTRICT ASSIGNMENT

As to the allegations contained in paragraph 1 of the Complaint, CIM admits that Local Rule 3-2(c) permits an intradistrict transfer in this instance.

PARTIES

As to the allegations contained in paragraph 2 of the Complaint, CIM lacks sufficient knowledge or information to form a belief as to the truth of the allegations, and on that basis, the allegations are denied.

As to the allegations contained in paragraph 3 of the Complaint, CIM admits the allegations set forth therein.

As to the allegations contained in paragraph 4 of the Complaint, CIM admits the allegations set forth therein.

INTRODUCTORY FACTS

As to the allegations contained in paragraph 5 of the Complaint, CIM lacks sufficient knowledge or information to form a belief as to the truth of the allegations, and on that basis, the allegations are denied.

As to the allegations contained in paragraph 6 of the Complaint, CIM lacks sufficient knowledge or information to form a belief as to the truth of the allegations, and on that basis, the allegations are denied.

As to the allegations contained in paragraph 7 of the Complaint, CIM lacks sufficient knowledge or information to form a belief as to the truth of the allegations, and on that basis, the allegations are denied.

As to the allegations contained in paragraph 8 of the Complaint, CIM lacks sufficient knowledge or information to form a belief as to the truth of the allegations, and on that basis, the allegations are denied.

As to the allegations contained in paragraph 9 of the Complaint, CIM lacks sufficient knowledge or information to form a belief as to the truth of the allegations, and on that basis, the allegations are denied.

As to the allegations contained in paragraph 10 of the Complaint, CIM lacks sufficient knowledge or information to form a belief as to the truth of the allegations, and on that basis, the allegations are denied.

As to the allegations contained in paragraph 11 of the Complaint, CIM lacks

1 sufficient knowledge or information to form a belief as to the truth of the
2 allegations, and on that basis, the allegations are denied.

3 As to the allegations contained in paragraph 12 of the Complaint, CIM lacks
4 sufficient knowledge or information to form a belief as to the truth of the
5 allegations, and on that basis, the allegations are denied.

6 **FIRST CAUSE OF ACTION**

7 As to paragraph 13, CIM incorporates by this reference its admissions and/or
8 denials to Plaintiffs' allegations as set forth in paragraphs 1-12, above.

9 As to the allegations contained in paragraph 14 of the Complaint, CIM denies
10 that it violated any of Plaintiff's rights pursuant to 17 U.S.C. 106 et. seq. within the
11 actionable limitations period.

12 As to the allegations contained in paragraph 15 of the Complaint, CIM denies
13 that it has benefitted from the alleged infringement. CIM lacks sufficient knowledge
14 or information to form a belief as to the truth of the remaining allegations, and on
15 that basis denies those allegations.

16 **SECOND CAUSE OF ACTION**

17 As to paragraph 16, CIM incorporates by this reference its admissions and/or
18 denials to Plaintiffs' allegations as set forth in paragraphs 1-15, above.

19 As to the allegations contained in paragraph 17 of the Complaint, CIM denies
20 that it violated any of Plaintiff's rights pursuant to 17 U.S.C. 106 et. seq. within the
21 actionable limitations period.

22 As to the allegations contained in paragraph 18 of the Complaint, CIM lacks
23 sufficient knowledge or information to form a belief as to the truth of the
24 allegations, and on that basis denies those allegations.

25 As to the allegations contained in paragraph 19 of the Complaint, CIM lacks
26 sufficient knowledge or information to form a belief as to the truth of the
27 allegations, and on that basis denies those allegations.

28 As to the allegations contained in paragraph 20 of the Complaint, CIM denies

1 that it has benefitted from the alleged infringement. CIM lacks sufficient knowledge
2 or information to form a belief as to the truth of the remaining allegations, and on
3 that basis denies those allegations.

4 **THIRD CAUSE OF ACTION**

5 As to paragraph 21, CIM incorporates by this reference its admissions and/or
6 denials to Plaintiffs' allegations as set forth in paragraphs 1-20, above.

7 As to the allegations contained in paragraph 22 of the Complaint, CIM lacks
8 sufficient knowledge or information to form a belief as to the truth of the
9 allegations, and on that basis denies those allegations.

10 As to the allegations contained in paragraph 23 of the Complaint, CIM denies
11 those allegations.

12 As to the allegations contained in paragraph 24 of the Complaint, CIM lacks
13 sufficient knowledge or information to form a belief as to the truth of those
14 allegations, and on that basis denies those allegations.

15 As to the allegations contained in paragraph 25 of the Complaint, CIM denies
16 those allegations.

17 As to the allegations contained in paragraph 26 of the Complaint, CIM denies
18 those allegations.

19 As to the allegations contained in paragraph 27 of the Complaint, CIM denies
20 those allegations.

21 **CAUSATION/DAMAGES**

22 As to the allegations contained in paragraph 28 of the Complaint, CIM lacks
23 sufficient knowledge or information to form a belief as to the truth of those
24 allegations, and on that basis denies those allegations.

25 **RELIEF REQUESTED AND DEMAND FOR JUDGMENT**

26 The remainder of the Complaint contains Plaintiff's "requested relief" and a
27 "demand for judgment" to which no response is required. To the extent a response is
28 deemed necessary, CIM denies the allegations in Plaintiff's "requested relief" and a

1 “demand for judgment,” and further avers that Plaintiff is not entitled to any relief in
2 this action.

3 **AFFIRMATIVE DEFENSES**

4 CIM submits the following additional defenses and expressly reserves the
5 right to assert other defenses if, among other things, the facts developed during
6 discovery warrant amendment.

7 **FIRST AFFIRMATIVE DEFENSE**

8 **(Infringement of Others)**

9 1. CIM alleges that persons or entities other than CIM were themselves
10 responsible for the Plaintiff’s claimed damages, if any.

11 **SECOND AFFIRMATIVE DEFENSE**

12 **(Statute of Limitations)**

13 2. To the extent CIM is, for whatever reason, deemed to have violated
14 Plaintiff’s rights pursuant to 17 U.S.C. § 106, and/or 17 U.S.C. § 1202, CIM asserts
15 that Plaintiff’s claims are barred by 17 U.S.C. § 507(b) in that, among other things,
16 Plaintiff knew or should have known about the alleged infringement more than three
17 years before it filed suit.

18 **THIRD AFFIRMATIVE DEFENSE**

19 **(Innocent Infringement)**

20 3. To the extent this Court determines, for whatever reason, that
21 Defendant violated 17 U.S.C. §§ 106 and/or 1202, Defendant acted in good faith,
22 innocent of any knowledge or intent to infringe Plaintiff’s rights. If such good faith
23 and lack of intent does not, as a matter of law, preclude a finding of liability, the
24 extent and amount of any general or statutory damages awarded to Plaintiff should
25 be correspondingly reduced as befitting an innocent infringer.

26 **FOURTH AFFIRMATIVE DEFENSE**

27 **(Mitigation of Damages)**

28 4. Plaintiff has failed to mitigate the damages, if any, that he has allegedly

1 suffered, based at least in part on Plaintiff's failure to send timely DMCA notices,
2 and Plaintiff's failure to timely notify Defendant about the alleged infringements for
3 which Plaintiff contends there is infringement liability. Moreover, on information
4 and belief, Plaintiff sat on his claims after discovering them back in 2019 or earlier.

5 **FIFTH AFFIRMATIVE DEFENSE**

6 **(Invalid Copyright)**

7 5. Plaintiff's purported copyrights and registrations are invalid, properly
8 subject to invalidation, void, and/or unenforceable based upon deficiencies, for
9 which further investigation or discovery is likely to provide evidentiary support, as
10 follows: (a) the registrations for the purported copyrights contain material that is not
11 original and/or is not protectable as a matter of law; (b) the registrations for the
12 purported copyrights contain materials originally developed by persons or entities
13 other than Plaintiff; (c) the registrations for the purported copyrights contain
14 materials in the public domain; and/or (d) the registrations were not properly
15 obtained and/or do not provide protection for the work identified in the Complaint.

16 **SIXTH AFFIRMATIVE DEFENSE**

17 **(Unjust Enrichment)**

18 6. Plaintiff's claims are barred in that they seek excessive damages from
19 Defendant that would result in Plaintiff's unjust enrichment.

20 **SEVENTH AFFIRMATIVE DEFENSE**

21 **(Reservation of Defenses)**

22 7. CIM does not currently have sufficient knowledge or information about
23 whether it may have affirmative defenses in addition to those stated in this Answer.
24 Therefore, CIM reserves the right to amend this Answer to assert any such
25 affirmative defenses at or before trial as additional information is obtained through
26 discovery and investigation.

DEFENDANT'S PRAYER

WHEREFORE, CIM prays as follows:

1. Plaintiff take nothing by the Complaint;
2. Judgment be rendered in favor of CIM;
3. CIM be awarded costs of suit;
4. CIM be awarded its attorneys' fees incurred in the defense of this action; and
5. CIM be awarded whatever further relief the Court deems just and proper.

DATED: September 2, 2022

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: /s/ Jonathan Pink
JONATHAN S. PINK
Attorneys for Defendant CIM GROUP, LP

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, CIM GROUP, LP hereby demands a trial by jury of all issues triable by jury.

DATED: September 2, 2022

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: /s/ Jonathan Pink
JONATHAN S. PINK
Attorneys for Defendant CIM GROUP, LP

FEDERAL COURT PROOF OF SERVICE

Oppenheimer v. CIM Group, LP, et al.

Case No. USDC-Northern – 4:22-cv-03444-JSW

STATE OF CALIFORNIA, COUNTY OF ORANGE

At the time of service, I was over 18 years of age and not a party to the action. My business address is 650 Town Center Drive, Suite 1400, Costa Mesa, CA 92626. I am employed in the office of a member of the bar of this Court at whose direction the service was made.

On September 2, 2022, I served the following document(s): **DEFENDANT CIM GROUP, LP's ANSWER TO PLAINTIFFS' COMPLAINT**

I served the documents on the following persons at the following addresses (including fax numbers and e-mail addresses, if applicable):

SEE ATTACHED SERVICE LIST

The documents were served by the following means:

(BY E-MAIL OR ELECTRONIC TRANSMISSION) Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Executed on September 2, 2022, at Costa Mesa, California.

/s/ Joe Mills

Joe Mills

SERVICE LIST

Oppenheimer v. CIM Group, LP, et al.

Case No. USDC-Northern– 4:22-cv-03444-JSW

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